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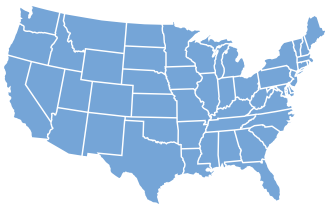
EMPLOYERS STATE LAW ALERT
Summarizing Significant New Employment Laws & Regs in All 50 States



Employee Leave

Vol. 13, No. 10 • October 2018

Time to examine 'safe leave' laws in wake of heightened attention on sexual assault

by Tammy Binford

Sexual assault has been in the spotlight in recent months as the #MeToo movement and Senate hearings over allegations made against newly confirmed Supreme Court Justice Brett Kavanaugh have captured the public's attention. The issue also has an impact on work absences since those who are dealing with abuse often need time off work.

While no federal law mandates paid leave or even unpaid leave in most instances, a number of state and local governments have addressed the issue in recent years.

A look at some paid leave laws

A number of states have passed laws that require at least some employers to provide paid time off for employees who are dealing with their own or a family member's illness. Many times, those laws also include paid time off for victims of domestic violence, sexual assault, or stalking. Although laws vary from state to state, they often share similarities.

New Jersey is one state that soon will offer paid leave to victims of domestic or sexual violence. The state's Paid Sick Leave Act—scheduled to go into effect October 29—applies to all private and public employers regardless of size. In addition to providing paid time off for an employee's or family member's illness, the law provides leave for medical, legal, or other victim services resulting from domestic or sexual violence perpetrated on the employee or the employee's family member.

"Family member" is broadly defined to include an employee's child, spouse, domestic partner, civil union partner, parent (including an adoptive parent, foster parent, stepparent, or legal guardian), grandparent, or grandchild and the parent, grandparent, or sibling of the employee's spouse, domestic partner, or civil union partner.

Rhode Island has a new Healthy and Safe Families and Workplaces Act, which went into effect July 1. In addition to providing sick time, it enables employees to take time off to deal with domestic violence, sexual assault, or stalking. Employees also can take time off to assist a family member or member of their household who is dealing with domestic violence, sexual assault, or stalking.

In Rhode Island, employers with at least 18 employees must provide paid leave. Employers with fewer than 18 employees must provide earned sick and safe leave, but it doesn't have to be paid.

Arizona is another state with a paid sick leave law that includes leave time for employees to obtain services

(continued on pg. 2)

In This Issue

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Alan King, Editor • Brad Forrister, VP Content • With contributions from members of the Employers Counsel Network

related to domestic or sexual violence for the employee or a family member. Like New Jersey, the Arizona law broadly defines "family member." It includes a spouse, domestic partner, parents, children, grandparents, grandchildren, and any individuals regardless of age who acted—or for whom the employee or the employee's spouse or domestic partner acted—in a parental role during childhood.

Arizona's law, in effect since July 1, 2017, covers all employers in the state except the state and federal governments. Small employers—those with fewer than 15 employees—are required to allow workers to earn up to 24 hours of sick leave per year. Employers with 15 or more employees must allow workers to earn as much as 40 hours of paid sick leave per year. The accrual rate for all Arizona employees is one hour of sick leave for every 30 hours worked.

In **California,** state law requires employers to allow employees to use accrued leave under the state's paid sick leave law if they are victims of domestic violence, sexual assault, or stalking.

Vermont is another state with a paid sick leave law that includes dealing with domestic and sexual abuse. Vermont's law allows employees to use the leave to obtain services or care for the employee or the employee's family member who is a victim of domestic violence, sexual assault, or stalking.

Paid or unpaid leave laws

Although some states are beginning to enact laws that require employers to provide paid leave to employees dealing with domestic abuse or sexual assault, other states are mandating the leave without requiring that it be paid.

For example, **Florida** is among the states that allow employees to take leave to deal with domestic or sexual violence, but the leave doesn't have to be paid.

Kansas provides another example of state laws on treatment of employees dealing with domestic violence. Under Kansas' law, an employee dealing with domestic violence must be allowed time off to seek medical attention, obtain services from domestic violence programs, or make court appearances related to domestic violence. The law stipulates that an employee may use any accrued paid leave. If paid leave isn't available, she must be allowed up to eight days per calendar year of unpaid leave.

Like several other states, Kansas prohibits discrimination and retaliation against employees for taking time off as a result of domestic or sexual abuse.

Washington's Domestic Violence Leave Act, entitles employees to take leave to obtain help or assist a family member in dealing with domestic violence, sexual assault, or stalking. The law prohibits employers from taking negative actions because a worker is an actual or perceived victim of domestic violence, sexual assault, or stalking. Negative actions include discrimination, retaliation, demotion, firing, or refusing to hire a qualified person. Also prohibited are actions that negatively affect promotions, compensation, or other conditions of employment.

Under Washington's law, employees can choose to use paid sick leave, other paid time off, compensatory time, or unpaid leave. Leave taken for domestic violence can be used to seek legal or law enforcement help, seek treatment from a healthcare provider for physical or mental injuries, help a family member obtain services, participate in safety planning, temporarily or permanently move, or take other actions to increase safety.

Illinois is another state that allows—but doesn't require—employees to use paid time off to deal with domestic violence, sexual assault, or stalking. Illinois' law is modeled more like the federal Family and Medical Leave Act (FMLA) in that it allows extended time off. Employers with no more than 14 employees must provide up to four weeks of leave in any 12-month period. Employers with 15 to 49 employees must allow eligible employees to take up to eight weeks in a 12-month period. And employers with 50 or more employees must grant up to 12 weeks.

Statutes

California

Employee Benefits

Paid family leave program

This law expands the scope of the family temporary disability insurance program to include time off to participate in a qualifying exigency related to the covered active duty or call to covered active duty of the individual's spouse, domestic partner, child, or parent in the armed forces of the United States. The law authorizes the Employment Development Department to require the employee to provide a copy of the covered active duty orders or other documentation issued by the military that indicates the employee's spouse, domestic partner, child, or parent is in the armed forces, is on covered active duty or has been called to covered active duty, and the dates of the covered active duty service.

Cite: 2018 CA SB1123, CA Pub. Ch. 849 (10 pages)

Enacted: 9/27/2018

Effective: 1/1/2021

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1123

Employee Safety

Human trafficking awareness

This law amends the Fair Employment and Housing Act to require specified employers to provide at least 20 minutes of prescribed training and education regarding human trafficking awareness to employees who are likely to interact or come into contact with victims of human trafficking. The law establishes a schedule for compliance commencing January 1, 2020, and authorizes the Department of Fair Employment and Housing to seek an order requiring compliance for employers that violate the law.

Cite: 2019 CA 970, CA Pub. Ch. 842 (3 pages)

Enacted: 9/27/2018

Effective: 1/1/2019

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB970

OSHA

Violations of OSHA standards

This law provides that an occurrence, for purposes of issuing a citation or notice for a violation of specified provisions relating to record-keeping requirements, continues until it is corrected, the California Division of Occupational Safety and Health (Cal/OSHA) discovers the violation, or the duty to comply with the requirement that was violated no longer exists.

Cite: 2018 CA AB2334, CA Pub. Ch. 538 (8 pages)

Enacted: 9/19/2018

Effective: 1/1/2019

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2334

Analysis

Sexual Harassment Legislation

Governor Brown signs significant #MeToo-inspired bills into law

by Cathleen S. Yonahara

On September 30, 2018, the deadline for signing or vetoing all pending bills this legislative session, Governor Jerry Brown signed into law several significant bills inspired by the #MeToo movement. The new laws will require California employers to update existing agreements, policies, and procedures.

Nondisclosure provisions in settlement agreements

Under **Senate Bill (SB) 820,** a nondisclosure provision in a settlement agreement that prevents the disclosure of *factual* information related to claims of sexual assault, sexual harassment, sex discrimination, or retaliation in a civil or administrative action entered into on or after January 1, 2019, shall be void as a matter of law and against public policy. SB 820 also precludes courts from entering orders that restrict the disclosure of such facts. However, if neither party is a governmental agency or public official, the parties may include a provision in the settlement agreement that shields the identity of the claimant and all facts that could lead to the discovery of her identity if she requests such a provision.

SB 820 permits settlement agreement provisions that preclude the disclosure of the amount paid in settlement of sexual harassment claims. However, an employer may lose a federal tax deduction if it includes such a provision in a settlement. As part of the 2017 Tax Cuts and Jobs Act, Congress enacted Internal Revenue Code Section 162(q), which provides, effective December 22, 2017, that "no deduction shall be allowed under this chapter for (1) any settlement or payment related to sexual harassment or sexual abuse if such settlement or payment is subject to a nondisclosure agreement, or (2) attorney[s]' fees related to such a settlement or payment." Accordingly, even though California employers may restrict the disclosure of the amount paid to settle a sexual harassment claim, they may lose a federal tax deduction under Section 162(q) if they do so.

Agreements prohibiting employees from testifying

Assembly Bill (AB) 3109 makes a provision in a contract or settlement agreement void and unenforceable if it waives a party's right to testify at an administrative, legislative, or judicial proceeding about alleged criminal conduct or sexual harassment. The prohibition applies when the party has been required or requested to attend the proceeding under a court order, subpoena, or written request from an administrative agency or the legislature.

In support of AB 3109, the author, Assemblymember Mark Stone (D-29th District), cited the case of McKayla Maroney, an Olympic gymnast who was potentially liable for a $100,000 fine for testifying in a criminal trial against a team doctor who sexually abused her and several other gymnasts. Her testimony would have violated the nondisclosure provisions in her settlement with USA Gymnastics.

Releases and nondisparagement agreements

SB 1300 prohibits employers from requiring employees to sign a release of a claim or right, including the right to file a civil action or complaint with a state agency, a law enforcement agency, or any court or other governmental agency, in exchange for a raise or bonus or as a condition of employment or continued employment. Employers are also prohibited from requiring employees to sign an agreement, including a nondisparagement agreement, denying them the right to disclose information about sexual harassment or other unlawful acts in the workplace. These restrictions don't apply to negotiated settlement agreements.

Sexual harassment legal standards

SB 1300, the legislature added Section 12923 to the Government Code to declare its intent with regard to the legal standard for establishing harassment:

- In a workplace harassment lawsuit, an employee need not prove that her tangible productivity has declined as a result of the harassment.
- A single incident of harassing conduct is sufficient to create a triable issue regarding the existence of a hostile work environment.
- A discriminatory remark, even if it's made by a non-decision-maker or outside the context of an employment decision, may be relevant circumstantial evidence of discrimination (a rejection of the "stray remarks" doctrine).
- The legal standard for sexual harassment shouldn't vary according to types of workplaces. In other words, it's not relevant that a particular occupation has a greater frequency of sexually related comments or conduct.
- It's rarely appropriate to resolve harassment cases on a motion for summary judgment (i.e., a request for dismissal without a trial).

Bystander intervention training

As part of **SB 1300** also encourages employers to provide bystander intervention training that includes information and practical guidance on how to enable bystanders

to recognize potentially problematic behavior and motivate them to take action when they observe problematic behavior. The training and education may include exercises to provide bystanders with the skills and confidence to intervene and resources to support their intervention. Although the training isn't legally required, it may be useful to provide such training to demonstrate that you took all reasonable steps to prevent harassment from occurring.

Sexual harassment prevention training requirements

SB 1343 significantly expands the harassment prevention training requirements under California's Fair Employment and Housing Act. By January 1, 2020, employers with five or more employees must provide mandatory harassment prevention training to all employees (including nonsupervisory employees) within six months of the date they began their employment. Currently, the training requirements apply only to large employers with at least 50 employees and cover only training for supervisors.

Employers that have provided the required training to an employee after January 1, 2019, need not provide training by the January 1, 2020, deadline. However, after January 1, 2020, employers must provide harassment prevention training to each employee in California once every two years. Nonsupervisors must receive one hour of training, while supervisors still need to receive two hours of training.

The training may be completed by employees individually or as part of a group presentation. It's permissible to complete the training in short increments, provided the applicable hourly total requirement is satisfied. An employer may develop its own training module or may use the applicable online training that will be developed by the California Department of Fair Employment and Housing.

Beginning January 1, 2020, an employer must offer training for seasonal and temporary employees or any employee who is hired to work for fewer than six months (1) within 30 calendar days after the employee's hire date or (2) within 100 hours worked, whichever is earlier. However, if a temporary employee is employed by a temporary services agency, the training must be provided by the agency, not the client.

Female directors at publicly held corporations

On September 30, 2018, California became the first state in the nation to require corporate boards of directors to include women. The California Legislature found that as of June 2017, female directors held only 15.5 percent of board seats at the 446 publicly traded companies included on the Russell 3000 Index and headquartered in California. Moreover, 26 percent of those publicly traded companies had no female directors serving on their boards. Governor Brown stated that although there are potentially fatal flaws in the new law, "it's high time corporate boards include the people who constitute more than half the 'persons' in America."

SB 826 requires that by December 31, 2019, each publicly held domestic or foreign corporation with principal executive offices in California have a minimum of one female director. By the close of 2021, California corporations with six or more directors must have a minimum of three female directors, corporations with five directors must have at least two female directors, and corporations with four or fewer directors must have at least one female director. Failure to timely file board member information with the secretary of state will result in a penalty of $100,000 for a first violation and $300,000 for subsequent violations.

Bottom line

The newly enacted laws covered in this article require you to make several changes to your agreements, policies, and procedures. Those changes include taking the following steps:

- Ensure that settlement agreements entered into on or after January 1, 2019, don't prevent employees from disclosing factual information about claims of sexual assault, sexual harassment, sex discrimination, or related retaliation claims.
- Ensure that agreements entered into on or after January 1, 2019, don't require an employee to waive his right to testify at an administrative, legislative, or judicial proceeding about criminal conduct or sexual harassment.
- Ensure that you don't require, as a condition for a raise or bonus or for employment or continued employment, that employees release claims or agree not to disclose information about sexual harassment or other unlawful acts.
- Update your training policies and procedures to ensure that you provide the necessary training to both supervisory and *nonsupervisory* employees by January 1, 2020, and every two years after that.
- If you are a publicly traded company with principal executive offices in California, ensure that you have the requisite number of female directors by December 31, 2019, and December 31, 2021.

Excerpted from *California Employment Law Letter*
Mark I. Schickman, Cathleen S. Yonahara, Editors
Freeland Cooper & Foreman LLP

Workers' Compensation

Disability indemnity payments

This law, until January 1, 2023, authorizes an employer, with the written consent of the employee, to deposit disability indemnity payments for the employee in a prepaid card account that meets specified requirements, including, among other things, allowing the employee reasonable access to in-network ATMs. The law requires employers to provide all necessary aggregated data on their prepaid account programs to the Commission on Health and Safety and Workers' Compensation upon request.

Cite: 2018 CA SB880, CA Pub. Ch. 730 (2 pages)

Enacted: 9/23/2018

Effective: 1/1/2019

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB880

Workplace Standards

Mental health

This law authorizes the Mental Health Services Oversight and Accountability Commission to establish a framework

and voluntary standard for mental health in the workplace that serves to reduce mental health stigma; increase public, employee, and employer awareness of the recovery goals of the Mental Health Services Act; and provide guidance to California's employer community to put in place strategies and programs to support the mental health and wellness of employees.

Cite: 2018 CA SB1113, CA Pub. Ch. 354 (3 pages)

Enacted: 9/11/2018

Effective: 1/1/2019

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB1113

Delaware

Sexual Harassment

Protections from sexual harassment in the workplace

This law defines sexual harassment and makes employers responsible for the sexual harassment of an employee by a supervisor or another employee when they knew or should have known about it and failed to take appropriate corrective action. The law prevents an employer from retaliating against an employee for filing a discrimination charge. The law requires the Department of Labor to create an information sheet pertaining to sexual harassment that employers must distribute to employees. Employers with 50 or more employees in Delaware must provide sexual harassment training to all employees every two years. The law requires the department to post the law's requirements on its website and perform outreach necessary to educate employers.

Cite: 2018 DE HB 360 (6 pages)

Enacted: 8/29/2018

Effective: 1/19/2019

https://legis.delaware.gov/BillDetail/26453

Illinois

Military Employees

Creates the Service Member Employment and Reemployment Rights Act

This law creates the Service Member Employment and Reemployment Rights Act. It contains provisions concerning matters relevant to the employment rights of servicemembers, including employment protections, additional benefits for public employee members of a reserve component, prohibitions on discrimination, a notice of rights and duties, violations, enforcement, remedies, and rule making. The law provides that the Attorney General shall appoint an Illinois Service Member Employment and Reemployment Rights Act advocate to carry out various duties related to the law.

Cite: 2018 IL SB 3547, IL Pub. Ch. 100-1101 (32 pages)

Enacted: 8/26/2018

Effective: 1/1/2019

www.ilga.gov/legislation/publicacts/100/PDF/100-1101.pdf

New Jersey

Legislation

What New Jersey employers need to know about new 'Pass the Trash' law

by Bridgette N. Eagan and Katherine E. Stuart

Now is a good time to remind private employers holding contracts with New Jersey school districts and charter schools about the new, extensive background check requirements they face under the New Jersey Pass the Trash Act. The goal is to screen applicants and employees for child abuse and sexual misconduct in their former employment.

How law targets past child abuse, sexual misconduct

The law, which became effective on June 1, 2018, requires employers and independent contractors to conduct a 20-year employment review of applicants and employees who will have "regular contact with students." Employers must:

- Request information from the applicant or employee about child abuse and sexual misconduct while working with current and former employers for the last 20 years;
- Collect the names, addresses, telephone numbers, and relevant contact information of the current and former employers during the 20-year time span (when the applicant or employee worked for a school or in a position that involved direct contact with children), and inquire about child abuse and sexual misconduct.
- Obtain authorizations from applicants to conduct the employment review;
- Contact any out-of-state employers for whom the applicant/employee held a job involving regular contact with students; and
- Update employment applications for jobs that involve regular contact with students to include the penalties for those who provide false information, which include termination or the denial of employment and fines of up to $500.

In addition to the affirmative obligation to conduct an employment review for child abuse and sexual misconduct, New Jersey employers will be on the receiving end of such inquiries. If you receive a request under the Act, you must respond within 20 days and disclose the information. Failure to do so may be grounds for the applicant's automatic disqualification from employment. Significantly, the Act provides immunity to employers that provide the requested information in good faith.

Bottom line

Employers doing business with New Jersey school districts or charter schools should review and revise existing hiring policies, practices, and procedures to ensure compliance with the Act. Human resources personnel also should be trained on the new requirements to ensure that internal hiring processes and employment applications are properly updated to comply.

Excerpted from *New Jersey Employment Law Letter*
John C. Petrella, Dina M. Mastellone, Editors
Genova Burns

Wyoming

Analysis

Discrimination

Jackson bans sexual orientation and gender identity discrimination

by Brad Cave

Jackson recently became the second Wyoming town to adopt an ordinance prohibiting discriminatory employment practices based on sexual orientation and gender identity or expression. (The first was Laramie in May 2015.) Here's what you need to know.

New discrimination ordinance

The Jackson Town Council recently adopted an ordinance that prohibits sexual orientation and gender identity discrimination in employment, housing, and public accommodations. The employment discrimination provisions of Ordinance 1200 prohibit an employer from refusing to hire, discharging, promoting or demoting, or discriminating in matters of compensation or in the terms, conditions, or privileges of employment against an otherwise qualified person on the basis of his sexual orientation or gender identity or expression.

Codified as Chapter 9.26 of Jackson's Municipal Code, the new ordinance applies to any person or entity doing business within the town of Jackson that employs one or more employees. It doesn't apply to governmental entities, tax-exempt private membership clubs, or religious organizations.

Defining unlawful discrimination

For purposes of Jackson's ordinance, sexual orientation is defined as "actual or perceived heterosexuality, bisexuality, or homosexuality." Gender identity or expression is defined as "an actual or perceived gender[-]related identity, expression, or behavior, regardless of the individual's sex at birth."

The ordinance states that unlawful discrimination includes unfavorably subjecting any person to different or separate treatment not only because of her actual or perceived sexual orientation, gender identity, or expression but also because of her association with a person or group identified as homosexual or transgender. Unlawful discrimination can also include unfavorable actions based on the belief that a person has a particular sexual orientation or gender identity or expression, even if that belief is incorrect.

Retaliation and effective discrimination also banned

In addition to prohibiting discriminatory treatment, Jackson's ordinance forbids retaliation against a person who opposes any practices prohibited by the ordinance, makes a complaint, or assists in an investigation or proceeding related to a violation of the ordinance. It also prohibits employers from implementing or enforcing any policies or requirements that have the effect of creating unequal employment opportunities based on a person's actual or perceived sexual orientation or gender identity or expression.

Additional prohibited actions include:

- Assisting, conspiring, or coercing another person to discriminate in violation of the ordinance;
- Discriminating in the publication or distribution of advertising material, information, or solicitations;
- Adopting or enforcing any policy, requirement, sign, or notice that indicates discrimination; and
- Using agents, labor unions, employment agencies, or other intermediaries to discriminate in making referrals, listing, or providing information with regard to employment.

Limited process and remedy for violation

To assert a claim of sexual orientation or gender identity discrimination, an employee must file a complaint with the town manager (or her designee) within 90 calendar days after the alleged violation occurred. The town manager will assign the complaint to an investigator, who will provide a copy to the employer. The employer has just 15 calendar days to file an answer in response to the allegations in the complaint and assert any defense or exemptions.

If the investigator determines that there's reasonable cause to believe an unlawful employment practice occurred, the case will be referred to the town attorney, who may either initiate an action in municipal court or dismiss the complaint. There is no private right of action in the ordinance, meaning an aggrieved employee doesn't have the right to file his own lawsuit to enforce the ordinance.

A violation of the ordinance will result in a fine of up to $750 per violation per day.

Employer steps

The new ordinance took effect July 18, 2018. Employers that do business in Jackson should revisit their discrimination policies and practices, and update their antidiscrimination and equal employment opportunity policies to include sexual orientation and gender identity as protected classifications. In addition, managers and supervisors should be trained to recognize potential discrimination based on sexual orientation or gender identity and avoid any retaliatory actions against employees who complain about discrimination or participate in an investigation or proceeding.

Excerpted from *Wyoming Employment Law Letter*
Bradley T. Cave, Paula Fleck, Editors
Holland & Hart LLP

Regulations

Alabama

Licensure—Healthcare Professionals

Physician assistants

The Alabama Board of Medical Examiners adopted amendments to rules for physician assistants, including changes to sections on qualifications for registration, interim approval, covering physicians, forms requiring a physician's signature, and grounds for the involuntary termination of registration.

Cite: Ala. Admin. Code r. 540-X-7-.16, .21, *et seq.* (36 Ala. Admin. Mthly. 11, 08/31/2018) (72 pages)

Adopted: 8/2/2018

Effective: 9/16/2018

www.alabamaadministrativecode.state.al.us/docs/mexam/540-X-7.pdf

Alaska

Licensure—Healthcare Professionals

Medical occupational license fees

The Alaska Medical Board amended rules to update licensure fees for physicians, podiatrists, osteopaths, physician assistants, and mobile intensive care paramedics.

Cite: 12 AAC 02.250 (Online Public Notices, 08/01/2018) (14 pages)

Adopted: 7/31/2018

Effective: 8/30/2018

https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=113536

Arizona

Occupational Safety

Construction and general industry safety

The Industrial Commission amended rules to update occupational safety and health standards for construction and general industry consistent with federal rules.

Cite: A.A.C. R20-5-601, R20-5-602 (24 A.A.R. 2319, 08/17/2018) (5 pages)

Adopted: 8/17/2018

Effective: 7/23/2018

https://apps.azsos.gov/public_services/register/2018/33/contents.pdf

Occupational Safety

Recording and reporting requirements

The Industrial Commission amended rules to comply with federal changes to recording and reporting requirements for occupational injuries and illnesses.

Cite: A.A.C. R20-5-629 (24 A.A.R. 2263, 08/10/2018) (4 pages)

Adopted: 8/10/2018

Effetive: 7/23/2018

https://apps.azsos.gov/public_services/register/2018/32/contents.pdf

Colorado

Employment Security

Pattern of failing to respond

The Division of Unemployment Insurance amended rules determining whether employers have demonstrated a "pattern of failing to respond timely or adequately" to requests for information from the division.

Cite: 7 C.C.R. 1101-2-7-4-1, 2, 3, 4 (41 CR 16, 08/25/2018) (1 page)

Adopted: 8/25/2018

Effective: 9/14/2018

www.sos.state.co.us/CCR/Upload/AGORequest/AdoptedRules12018-00271.doc

Employment Security

Quarterly reports

The Division of Unemployment Insurance adopted amendments to employer requirements for quarterly reports, including total covered wages paid and premiums owed, with exceptions for agencies performing intelligence or counterintelligence functions. The amendments also include requirements for timeliness of reports.

Cite: 7 C.C.R. 1101-2-7-2-4, 5 (41 CR 16, 08/25/2018) (1 page)

Adopted: 8/25/2018

Effective: 9/14/2018

www.sos.state.co.us/CCR/Upload/AGORequest/AdoptedRules02018-00269.doc

Iowa

Licensure

Practice and discipline of chiropractic physicians

The Board of Chiropractics adopted amendments to rules for the practice and discipline of chiropractic physicians to prohibit dating or sexual relationships with current and former patients within specified limits, regardless of consent, and to require a response within 30 days of receipt of any communication from the board that was sent by registered or certified mail.

Cite: Iowa Admin. Code r. 645-43.3 (151, 514F), 645-45.2 (151, 272C) (41 Iowa Admin. Bull. 431, 08/15/2018) (3 pages)

Adopted: 7/24/2018

Effective: 9/19/2018

www.legis.iowa.gov/docs/aco/bulletin/08-15-2018.pdf

Maine

Occupational Safety

Hazardous occupations for minors

The Bureau of Labor Standards adopted amendments to align state rules governing hazardous occupations for minors with federal standards, including easing state restrictions that will allow 17-year-olds to drive for work-related business, allow 16-year-olds to work alone in a cash-based business and perform soldering and welding duties. However, all minors are prohibited from working in marijuana-related occupations.

Cite: 12 170 CMR 11 (Weekly Notices of State Rulemaking, 08/22/2018) (10 pages)

Adopted: 8/19/2018

Effective: 8/19/2018

www.maine.gov/sos/cec/rules/12/170/170c011.docx

Minnesota

Licensure

Licensure and certification rules

The Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design adopted rules for licensure and certification related to examinations, applications, fee refunds, education requirements, and signature requirements.

Cite: Minn. R. 1800.0130, 0400, 0500, *et seq.* (43 Minn. Reg. 89, 08/06/2018) (7 pages)

Adopted: 8/6/2018

Effective: 8/6/2018

https://mn.gov/admin/assets/SR43_6%20-%20Accessible_tcm36-348031.pdf

Missouri

Licensure

Architects and engineers

The Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects amended rules affecting the Code of Professional Conduct, seals, applications, renewals, complaints, and supervision.

Cite: 20 CSR 2030-1.020, 1.030, 2.010, *et seq.* (43 MO Reg. 2481, 08/15/2018) (5 pages)

Adopted: 8/15/2018

Effective: 9/30/2018

www.sos.mo.gov/adrules/csr/current/20csr/20csr#20-2030

New York

Minimum Wage

Home care aide hours worked

The Department of Labor adopted emergency regulations in response to State Appellate Divisions decisions codifying the commissioner of labor's long-standing and consistent interpretation that meal periods and sleep times do not constitute hours worked for purposes of minimum wage and overtime requirements for the home healthcare industry.

Cite: 12 NYCRR 142-2.1(b), 142-3.1(b), 142-3.7 (N.Y. St. Reg., 08/15/2018, page 13) (4 pages)

Adopted: 7/30/2018

Effective: 7/30/2018

https://docs.dos.ny.gov/info/register/2018/august15/rulemaking.pdf

North Carolina

Unemployment Insurance

Employer contributions and notifications

The Department of Commerce adopted extensive amendments to rules for unemployment insurance (UI) required by legislative changes to address the program integrity, maximize its efficiency, and prevent, detect, and reduce UI fraud, improper payments, and overpayments. The amendments include some changes to employer contributions and notification requirements for the Division of Employment Security regarding the content and manner in which it will seek offsets, employers' right to appeal, and the appeal hearing procedures.

Cite: 04 NCAC 24A (33 NC Reg. 161, 08/01/2018) (15 pages)

Adopted: 8/1/2018

Effective: 7/1/2018

http://reports.oah.state.nc.us/ncac/title%2004%20-%20commerce/chapter%2024%20-%20employment%20security/subchapter%20a/subchapter%20a%20rules.pdf

Ohio

Workers' Compensation

Retrospective rating plan premiums

The Bureau of Workers' Compensation amended rules for private employer retrospective rating plan minimum premium percentages, with appendices for Tier I and Tier II.

Cite: Ohio Admin. Code 4123:17-53 (Register of Ohio, 08/22/2018) (2 pages)

Adopted: 8/22/2018

Effective: 9/1/2018

www.registerofohio.state.oh.us/pdfs/4123/0/17/4123-17-53_FF_A_RU_20180822_0804.pdf

Pennsylvania

Analysis

Minimum Wage

L-I proposes significant changes to Pennsylvania Minimum Wage Act

by Jessica L. Meller

In 2016, the U.S. Department of Labor (DOL) set out to significantly modify the Fair Labor Standards Act (FLSA) regulations regarding exemptions from its overtime and

minimum wage requirements. The changes it proposed—including raising the current salary requirement from $455 to $913 per week—would have affected an estimated 4.2 million salaried workers, of which 4.1 million would have been reclassified as nonexempt and overtime-eligible. After an 11th-hour injunction from the U.S. District Court of the Eastern District of Texas, the DOL's proposed changes never took effect.

Since the death of the proposed federal rules, some states have taken on the task of implementing changes to their own minimum wage laws. The Pennsylvania Department of Labor & Industry (L&I) is now poised to change its requirements for the overtime exemption under the Pennsylvania Minimum Wage Act (PMWA). Like the FLSA, the PMWA and its regulations require employers to pay their employees minimum wage (currently $7.25 per hour) and overtime rates unless they meet specific exemptions. The PMWA and its regulations provide the exemptions, while the "salary test" and "duties test" determine whether an employee will meet the criteria for one of the exemptions. The proposed changes in Pennsylvania will affect the salary level and duties tests.

Changes to the 'salary test'

Pennsylvania's proposed regulations will raise the minimum salary an employee must earn to qualify for an exemption from $155 per week to $610 per week during the first year it is in effect.

The salary threshold is scheduled to increase over time. One year after implementation, the minimum salary will increase to $766 per week. The following year, it will increase to $921 per week. From that point forward, the minimum salary will be tied to "the 30th percentile of weekly earnings of full-time nonhourly workers in the Northeast Census region in the second quarter of the prior year" as published by the DOL.

Changes to the 'duties test'

At present, Pennsylvania's regulations require only that an employee's "primary dut[ies] consist of" tasks specifically listed under each exemption category. They also provide a means of determining whether a worker whose tasks include those specific to an exemption category as well as extraneous tasks still meets the exemption requirements. Interestingly, the proposed rules remove from the existing regulations the language that helps employers make this determination. They also jettison the phrase "consist of" from the current regulations. These changes are likely to be significant, particularly for employers whose employees handle a variety of tasks. It's possible that if some of these employees were previously exempt, they will be reclassified as nonexempt.

As of August 23, 2018, the comment period for the proposed regulations closed. Employers should anticipate that the final rules will be issued next year, barring legal challenges that could forestall (or possibly defeat) them.

What employers should do now

You shouldn't adopt a "wait-and-see" approach while the proposed regulations are pending. Instead, start planning now for the changes you may have to make if the proposed rules become law.

First, you should analyze your exempt employees' duties and salaries to identify which and how many employees may be reclassified under the new rules. You may want to perform this analysis on each employee, applying the increasing salary requirement for each of the first three years of implementation. This will help gauge how drastically your expenses will increase as well as what steps you may need to take to meet your increased expenses.

Further, you should consider updating your exempt employees' job descriptions. The more tightly those descriptions match the requirements of each exemption, the better. Finally, you may want to take stock of your nonexempt employees' hours to assess whether some expenses can be cut by limiting overtime.

Excerpted from *Pennsylvania Employment Law Letter*
Dena B. Calo, Allison L. Feldstein, Editors
Saul Ewing Arnstein & Lehr LLP

Texas

Licensure

Plumbing standards of conduct and enforcement

The Board of Plumbing Examiners repealed and replaced regulations defining standards of conduct, responsibilities, advertising, and complaints concerning licensed and registered plumbers.

Cite: 22 TAC §§ 367.1 - 367.15 (43 TexReg 5531, 08/24/2018) (8 pages)

Adopted: 8/9/2018

Effective: 8/29/2018

www.sos.state.tx.us/texreg/pdf/backview/0824/0824adop.pdf

Licensure—Healthcare Professionals

Physical therapy licensure compact

The Board of Physical Therapy Examiners adopted a new chapter to regulations to define the physical therapy compact and compact privilege and to specify violations that could result in disciplinary action.

Cite: 22 TAC §§ 348.1, 348.2 (43 TexReg 5367, 08/17/2018) (1 page)

Adopted: 7/30/2018

Effective: 8/19/2018

www.sos.state.tx.us/texreg/pdf/backview/0817/0817adop.pdf

Virginia

Licensure

Wastewater line maintenance

The Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals adopted amendments to conform the definition of licensed "maintenance" work to include in-kind replacement of sewer lines, conveyance lines, distribution boxes, and header lines that do not require a construction permit for adjustment and replacement.

Cite: 18 VAC 160-40-10 (34 VA Regs Reg. 2575,

08/20/2018) (3 pages)

Adopted: 8/1/2018

Effective: 9/19/2018

http://register.dls.virginia.gov/details.aspx?id=7021

Licensure—Healthcare Professionals

Licensure by endorsement

The Board of Medicine adopted regulations to provide for licensure by endorsement for physicians who have held one current, unrestricted license in another United States jurisdiction or in Canada for five years, have actively practiced during that time, have all licenses in good standing, hold current board certification, submit a report from the National Practitioner Data Bank, and have no grounds for denial of licensure.

Cite: 18VAC85-20-141 (34 VA Regs Reg. 2525, 08/06/2018) (1 page)

Adopted: 7/17/2018

Effective: 9/5/2018

http://register.dls.virginia.gov/details.aspx?id=7002

Washington

Licensure—Occupational Safety

Elevator mechanic licensure

The Department of Labor and Industries adopted amendments to elevator licensing rules with safety regulations and fees for all elevators, dumbwaiters, escalators, and other conveyances.

Cite: WAC 296-96 (WSR 18-18-068, 08/31/2018) (14 pages)

Adopted: 8/31/2018

Effective: 10/1/2018

http://lawfilesext.leg.wa.gov/law/wsr/2018/18/18-18-068.htm

Occupational Safety

Conveyance safety

The Department of Labor and Industries adopted new safety code requirements for conveyances, adopted references to other safety codes, adopted exceptions to national requirements, and updated rules for clarity.

Cite: WAC 296-96 (WSR 18-18-070, 08/31/2018) (95 pages)

Adopted: 8/31/2018

Effective: 10/1/2018

http://lawfilesext.leg.wa.gov/law/wsr/2018/18/18-18-070.htm

Wisconsin

Licensure

Chiropractic licensure and permits

The Chiropractic Examining Board adopted amendments to rules for licensure to practice chiropractic medicine, including changes to sections for license renewal.

Cite: Wis. Admin. Code § Chir 3.02, 3.03, *et seq.* (Wisconsin Register August 2018, No. 752, 09/01/2018) (3 pages)

Adopted: 9/1/2018

Effective: 9/1/2018

http://docs.legis.wisconsin.gov/code/register/2018/752B/insert/chir3